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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,161	06/08/2001	Mark Robert Watkins	30001673 US2	6707

7590 04/13/2004

LOWE HAUPTMAN GILMAN & BERNER, LLP
Suite 310
1700 Diagonal Road
Alexandria, VA 22314

EXAMINER

ELLIS, KEVIN L

ART UNIT	PAPER NUMBER
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2188

DATE MAILED: 04/13/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application

09/876,161

Applicant(s)

WATKINS ET AL.

Examiner

Kevin L. Ellis

Art Unit

2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6</u> . | 6) <input type="checkbox"/> Other: ____ |

Detailed Action

1. Claims 1-23 are presented for examination.
2. Information disclosed and listed on PTO 1449 has been considered.

Claim Rejections – Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-24 of copending Application No. 09/875,950. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the differences between the present independent claims (1, 7, 13, 15, and 20) and those of the copending application (1, 8, 14, 16, and 21) would be considered obvious by one of ordinary skill in the art. The present application states that there are specific locations in the second data storage area of remote computers reserved for the local computer.

The copending application states that the second data storage areas of remote computers are assigned to the local computer. It is obvious that if areas are assigned to the local computer then these areas would have specific locations. If they did not have specific locations then the system would not know where to store the data. These are obvious variations.

5. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections – 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. Claims 1-5, 7-11, 13-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by

Klostermann, EP 0 854 423 A1, 7/22/1998.

A) As to claims 1, 7, 13-17, and 19-21, Klostermann discloses the invention as claimed.

There is a network of individual computers (see Fig 1 Ref 2, 3, 4, & 5) each having a non-volatile data storage device (Fig 1 Ref A, B, C, & D) that is divided into a first storage area reserved for use by the corresponding computer (Fig 1 Ref a, b, c, & d, Abstract, and Col 6 Lines 1-18) and a second data storage area reserved for backup storage of data contained in the first storage area of at least one other non-volatile data storage device (Fig 1 Ref a1, a2, a3, b1, b2, b3, c1, c2, c3, d1, d2, & d3, Abstract, and Col 6 Lines 1-18), and a data protection component for storing the data in the second data storage area of other data storage devices (see Col 5 Lines 30-47 and Col 6 Lines 1-18).

B) As to claims 2-5 and 8-11, in order for the system of Klostermann to operate and store data into the other data storage devices the claimed limitations of these claims would have to be performed by some part of the system. The system must partition the storage devices to store the different data, it needs to use the network to locate other data storage devices to store the data into, and would have to schedule the transfer of the data.

C) As to claims 18, 22, and 23, the system of Klostermann does send writes to the second data storage areas when a write to the first data storage area occurs (see Col 7 Lines 35-43).

Claim Rejections – 35 USC § 103

8. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over

Klostermann, EP 0 854 423 A1, 7/22/1998, in view of Sharman, U.S. Patent 5,586,310.

- A) As to claims 6 and 12, Klostermann discloses the invention substantially as claimed.

Klostermann teaches that the data is distributed among the plurality of second data areas.

However, Klostermann does not disclose that the of the first storage areas is copied to each of the second storage areas. Sharman also teaches a system for storing data from a first storage area to a second storage area of a different computer system. This provides a backup of the data from the first storage area of a first computer in the second storage area of a second computer (see Fig 6 and Col 7 Lines 40). This would provide the redundant mode of operation as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Sharman in the system of Klostermann and include a redundant mode of operation that copied the data from each first storage area to all of the other second storage areas as this would overcome the problem of lost data when more than one computer system went down (see Col 7 Lines 44-58). As taught by Klostermann, if two or more storage systems fail then the data can be lost. However, by using the teachings of Sharman and storing the data of a first storage area in all of the other second storage areas the data would still be available as long as a single computer system was still operational.

Conclusion

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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin L. Ellis whose telephone number is 703-305-9659. The examiner can normally be reached on weekdays from weekdays from 6:00AM-2:30PM.
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 703-306-2903. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306.
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Kevin L. Ellis
Primary Examiner
April 9, 2004

Kevin L. Ellis